



February 13, 2002

Mr. David Anderson  
General Counsel  
Office of Legal Services  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2002-0683

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158590.

The Texas Education Agency (the "agency") received a request for the following documents:

1. Copies of all complaints received by TEA from Dec. 5, 2000, to the present regarding allegations of misconduct, including financial misconduct (a) by the Brownsville Independent School District administrators and/or (b) by BISD board members;
2. Copies of all correspondence between the TEA and Catalina Presas-Garcia from Dec. 5, 2000, to present, including complaints by her.
3. Copies of all correspondence between the TEA and BISD board members Herman Otis Powers Jr. and between the TEA and Joe Colunga from Dec. 5, 2000, to the present.
4. Copies of all correspondence between the TEA and BISD board members Randy Dunn, Marilyn del Bosque Gilbert, Pat Lehmann and Linda Salazar from May 5, 2001 to present.

5. Copies of all correspondence between the TEA and the Brownsville Independent School District from Dec. 5, 2000, to the present, concerning board travel, including the board trip to Orlando, Fla, in the spring of 2000 and repayment of monies owed from that trip and all other trips, including addenda and documents detailing TEA action.

6. Copies of all complaints received by TEA from Dec. 5, 2000, to the present regarding governance violations.

You claim that a portion of the requested information is excepted from disclosure pursuant to section 552.116 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

We note at the outset that the agency does not seek a decision regarding request items one through four and six. We, therefore, presume that the agency has provided the requestor with the information that is responsive to these particular request items to the extent that it exists. If not, you must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000)* (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.116 of the Government Code provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from the [public disclosure] requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. Section 552.116 excepts from disclosure only information that is prepared or maintained in conducting an audit or investigation which is authorized or required by a statute. You state that the records at issue, which are held by the agency's Division of School Financial Audits, constitute "audit working papers" from an audit of the Brownsville Independent School District that was conducted pursuant to chapter 44 of the Education Code, specifically sections 44.008 and 44.010. Based on our review of your representations and the information, we conclude that the agency may withhold the information from disclosure pursuant to section 552.116 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 158855

Enc. Submitted documents

cc: Ms. Melrose Huff  
Education Reporter  
The Brownsville Herald  
1135 East Van Buren  
Brownsville, Texas 78520  
(w/o enclosures)